

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2017-381-A

In Re:

Office of Regulatory Staff's Petition for an)
 Order Requiring Utilities to Report the Impact)
 Of the Tax Cuts and Jobs Act)
 _____)

OBJECTION TO PETITION TO INTERVENE

Palmetto Wastewater Reclamation LLC ("PWR"), pursuant to 10 S.C. Code Ann. R.103-825.A.3 (2012), submits the within objection to the April 24, 2018, Petition to Intervene of Landtech, LLC, and Lake Carolina Development, LLC, ("Petition") in the above-captioned docket. For the reasons set forth below, PWR objects to the proposed intervention and submits that the Petition should be denied and in support thereof would respectfully show unto this Honorable Commission as follows:

1. Petitioners have no interest cognizable in the instant docket as they are not customers of PWR and therefore will not be affected by the outcome of this proceeding, which pertains only to the questions raised by the Office of Regulatory Staff ("ORS") of whether (a) jurisdictional utility rates should be reduced and (b) ratepayers should receive a refund, both as a result of the passage of the Tax Cut and Jobs Act, Public Law 115-97, effective December 22, 2017 ("Act").

2. Additionally, Petitioners' stated interest in this proceeding is insufficient to warrant a grant of intervention as a matter of law. Petitioners state that they seek intervention for the express purpose of allowing themselves to submit a petition for rehearing or reconsideration of Commission

Order No. 2018-252, issued April 4, 2018, in this docket. *See* Petition at 2-3, paras. 3-5.¹ Petitioners assert that they are affected by Order No. 2018-252 and should be permitted to intervene because, *inter alia*, they “do not believe that a tax multiplier is warranted for ...PWR.” *Id.* at 2, para.4.² However, Petitioners have no right to submit a petition for rehearing or reconsideration as (1) only a party may submit such a petition and (2) a party must do so within twenty (20) days after the subject order is made. *See* S.C. Code Ann. § 58-5-330. *Cf.* 12 S.C. Code Regs. 103-804.L (2012) (“Parties of record may file a petition for rehearing of Commission orders pursuant to R.103-854”). Of course, the Commission has no authority to waive the requirements of § 58-5-330. Thus, Petitioners seek intervention for the purpose of seeking relief which is not available to them as a matter of law as they will not be a party within the twenty (20) day period. Accordingly, Petitioners’ putative interest in this proceeding will not be cognizable as a matter of law and their petition should therefore be denied.

3. Denial of this petition to intervene does not preclude review of the propriety of the tax multiplier approved in Order No. 2018-252 as S.C. Code Ann. § 58-5-290 (2015) allows the Commission, after hearing, to find that a PWR rate or charge is improper. Although PWR would dispute any assertion that the tax multiplier approved in Order No. 2018-252 is improper, because it is an approved rate or charge which is not subject to review under § 58-5-330, the only means by

¹ In Order No. 2018-252, the Commission authorized PWR to collect a tax multiplier from future customers and others who wish to make cash or in-kind contributions in aid of construction (“CIACs”) to Petitioner in view of the Act provisions making CIACs income to PWR that is subject to Federal corporate income tax.

² Petitioners also assert that “the Commission must consider the impact of the [Act] on ... PWR as a whole, and not merely based on one particular effect of one specific provision thereof” (*see* Petition at 2, para. 4), which concept they purport to expand upon in their improper and untimely petition for rehearing and reconsideration. Petitioners fail to grasp, however, that the scope of the instant docket is focused upon the effect of the Act on customers – which Petitioners are not. Petitioners further fail to recognize that the approval of the tax multiplier in Order No. 2018-252 directly addressed the impact of the Act on PWRs customers. By their filings, Petitioners make it clear that their interest is focused upon the impact of the Act on themselves – and potentially to the detriment of PWR’s customers -- as they seek to undo the benefit of relieving customers from the burden of increased income tax expenses which would be recovered in rates but for the existence of the tax multiplier. *See* Order No. 2018-252.

which the Commission may exercise jurisdiction in addressing the matters raised by Petitioners is pursuant to § 58-5-390.³

For all of the foregoing reasons, PWR objects to the Petition to Intervene and submits that it should be denied.

Respectfully submitted,

s/John M. S. Hoefer
 John M. S. Hoefer
 Benjamin P. Mustian
WILLOUGHBY & HOEFER, P.A.
 Post Office Box 8416
 Columbia, South Carolina 29202-8416
 803-252-3300

Attorneys for Palmetto Wastewater
 Reclamation, LLC

This 26th day of April, 2018
 Columbia, South Carolina

³ Petitioners assert in their putative petition for reconsideration of Order No. 2018-252 that PWR receives certain benefits from the Act which have the effect of reducing its tax burden arising from the receipt of CIACs. Even assuming the verity of this assertion – which PWR disputes – Petitioners fail to recognize that in the tax year in which a CIAC is received, PWR will incur income tax on the value of that CIAC that is payable for that year. That expense will not be spread over a number of years as Petitioners appear to suggest. Petitioners further fail to recognize that PWR receives no benefit from CIACs in rates as they are not includable in rate base nor cognizable for purposes of depreciation expense. By contrast, the income tax on a CIAC will become an expense that is recoverable in rates if not passed on to the entity causing that expense, i.e., the contributor of a CIAC. The Commission should not be fooled by the self-serving analysis in the petition for rehearing and reconsideration as it seeks to accomplish one goal: make ratepayers absorb the income taxes that are levied on plant contributed by Petitioners or their affiliates instead of passing these costs on to the entity which causes the cost. In addition, the Commission should take notice of the fact that developers, builders, and others who make CIACs are able to pass the costs of CIACs (including the tax multiplier) on to their customers, who are not customers of PWR. Subject to the Commission’s determination in this matter, PWR expressly reserves and does not waive its right to further respond and raise additional arguments in opposition to Petitioners’ putative petition for reconsideration or reconsideration. *See* 10 S.C. Code Ann. R. 103-825 (“Answers are not required to Petitions for Rehearing or Reconsideration.”).